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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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CISLO & THOMAS, LLP
233 WILSHIRE BLVD
SUITE 900
SANTA MONICA, CA 90401-1211

EXAMINER	
ANDERSEN, MICHAEL T	
ART UNIT	**PAPER NUMBER**
3734	

DATE MAILED: 06/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/800,306	GRIFFIN ET AL.	
	Examiner	Art Unit	
	M. Thomas Andersen	3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 April 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,25-27,29-38 and 40-48* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,25-27,29-38 and 40-48* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *19 April 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification does not mention or explain a "locking bar", nor does it mention a "bar" nor a "lock", as found in claims **29**, and **46-48**. It is unclear what the "locking bar" in these rejected claims is referring to.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim **38** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how the blade retaining members can frictionally engage an orifice in the blade. A minor amendment to the claim language is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims **1**, **25-27**, **33-38,** and **45** are rejected under 35 U.S.C. 102(b) as being anticipated by **Herbert**, U.S. Patent No. **5,868,771**. The patent to Herbert discloses a scalpel device.

Claim **1**: Figure 1 shows a blade 300 including an orifice 301. As to the "front and rear ends being disposed substantially in the same plane," Herbert discloses that only "[a] representative blade 300 is shown. The shape of the cutting edge of the blade and so forth are representative only. It is well known that there are many sizes, shapes, and styles of scalpel blades. The invention described herein is intended to cooperate with virtually any blade shape." Herbert, col. 4, lines 4-8. Herbert's figure 1 also shows a handle 100, a housing 200 configured to retain internally said blade and slide back and forth onto said handle. The housing includes a shoulder 202 (figure 10) that can be considered a sliding movement activator, and a blade disengaging actuator 217 on different sides of the housing 200. The actuator 217 is configured to disengage the blade 300 from the front handle portion.

Claim **25**: The blade disengaging actuator 217 is adapted to flex at a first end (near 214). See Herbert, col. 5, line 13 (referring to the disengaging actuator flexing).

Claim **26**: The rear of the handle is adapted for hand grasping.

Claim **27**: The front handle portion is equipped with at least one groove 106 configured to fit into said blade orifice. See Herbert, figure 2.

Claim **33**: The blade disengaging actuator 217 is adapted at a second end (near 218B – figure 6) to push the internally retained blade toward the front handle portion which causes the blade to disengage from the front handle portion. As mentioned above, the flexing end is near 214 (See figure 6).

Claim **34**: The disengaged blade is retained internally by the housing for safety. See Herbert, col. 5, lines 52-54.

Claim **35**: The housing is decoupled from the handle by sliding the housing away from the groove on the front handle portion. See Herbert, col. 5, lines 37-58.

Claim **36**: The blade is retained internally by the housing via a plurality of integral blade retaining members 226, 227 ("ramps"). See Herbert, col. 6, lines 47-49.

Claim **37**: The plurality of integral blade retaining members includes at least two members adapted to frictionally retain the rear end of the blade within the housing. See Herbert, col. 6, lines 47-49.

Claim **38**: See rejection above under 35 U.S.C. 112. The plurality of integral blade retaining members frictionally engage the blade to retain the housing portion with the groove in the orifice.

Claim **45**: Herbert discloses that the blade is completely enclosed by the housing for safety when the housing is decoupled from the handle portion. See Herbert, col. 5, lines 37-58.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims **29-32**, and **40** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Herbert** as applied to claim **27** above, in view of **Newman et al., U.S. 2002/0143352** (hereinafter "**Newman**").

Claims **29-32**: Herbert does not disclose a guide channel in the handle to guide the housing. However, Newman discloses a guide channel 21 that can be said to be flanked by a "locking bar," i.e., the handle material above the guide channel 21. The housing in Newman is adapted to slide within this guide channel 21 when activated (claim 30). Herbert discloses a sliding movement activator 41 that includes a stop 42 member at a first end 21a, said stop member being adapted to lock said housing at opposite ends (21a and 21b) of said locking bar. The stop member is further adapted to unlock the housing and slide within a guide channel 21 when the sliding movement activator 41 is pressed toward the locking bar. The sliding movement activator 41 is adapted to flex at a second end 21b, said second flexing end being disposed substantially opposite said stop member 21a at said first end. See Newman, figures 4-6.

It would be obvious to combine these two references because they involve the same field of endeavor (shielded surgical scalpels), and providing a guide channel and a stop member on the handle portion in Herbert, as disclosed by Newman, would add stability and safety to the scalpel assembly, respectively.

Claims **41-44,** and **46-48** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Newman** in view of **Herbert**.

Regarding claim **41**, Newman does not disclose a blade disengaging actuator, but he does disclose a surgical blade 30, a handle 20, a guide channel 21, a housing 40, a stabilizing rail 42 adapted to slide back and forth in the guide channel 21 of the first handle portion between a first position 21b in which the surgical blade is exposed

for operational use and a second position 21a in which the surgical blade is fully enclosed within the housing for safety, said surgical blade being securely engaged by the first handle portion in the first and second positions. Newman also discloses a sliding movement activator 41.

Herbert discloses a blade disengaging actuator 217 that when combined with Newman, would be configured to operate independently of the sliding movement activator, said sliding movement activator 41 and said blade disengaging actuator 217 being hinged respectively to adjacent sides of the housing, when the two references are so combined.

It would be obvious to combine these to references because they involve the same field of endeavor (shielding surgical scalpels) and providing a blade disengaging activator allows the blade to be removed from the handle, which saves replacement cost that would otherwise be expended to also replace the handle.

Regarding claim **42**, the hinged actuator 217 disclosed by Herbert, but not by Newman, is configured to disengage the surgical blade from the first handle portion when the housing is in the second position. See Herbert, col. 5, lines 37-58.

Regarding claim **43**, Newman's figure 1 shows that the blade has a front cutting end, a rear end, and an orifice 31, where the first and second ends are disposed in substantially the same plane.

Regarding claim **44**, as mentioned above, Newman does not show the blade decoupled from the handle portion and within the housing. However, Herbert discloses

that the blade is completely enclosed by the housing for safety when the housing is decoupled from the handle portion. See Herbert, col. 5, lines 37-58.

Regarding claims **46-48**, Newman discloses everything except a blade disengaging actuator. Herbert discloses a blade disengaging actuator 217 that would be configured to operate independently of the sliding movement activator, both of which would be integrally formed on different sides of the housing when combined. It would be obvious to combine these two references for the reasons stated above.

Other than the blade disengaging actuator, Newman discloses a blade 30, an orifice 31, a handle 20, a locking bar (the material atop slot 121), a guide channel 21, a housing 40, a stabilizing rail 42, and a sliding movement activator 41 adapted to one end to lock the housing at opposite ends (21a and 21b) of the locking bar.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Thomas Andersen whose telephone number is (571) 272-8024. The examiner can normally be reached on M-F 8AM-4:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Thomas Andersen

May 25, 2006

MICHAEL J. HAYES
PRIMARY EXAMINER